

)	
C.S., Appellant)	
)	
and)	Docket No. 19-0093
)	Issued: July 26, 2019
FEDERAL AVIATION ADMINISTRATION,)	
CHARLOTTE/DOUGLAS INTERNATIONAL)	
AIRPORT, Charlotte, NC, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

This case has previously been before the Board.¹ By decision dated July 27, 2016,² the Board set aside OWCP's March 10, 2016 decision, which modified in part, and affirmed in part, its prior determination of appellant's pay rate for compensation purposes pursuant to 5 U.S.C. § 8113(a) and remanded the case for OWCP to make proper findings with respect to appellant's pay rate. By order dated November 2, 2016,³ the Board set aside OWCP's June 29, 2016 overpayment decision, finding that the overpayment issues were not in posture for decision until

³ *Order Remanding Case*, Docket No. 16-1437 (issued November 2, 2016).

the issue of appellant's pay rate had been resolved. By decision dated July 27, 2017,⁴ the Board affirmed OWCP's November 3, 2016 decision which found that appellant had not met his burden of proof to establish a greater pay rate than that previously used for compensation purposes pursuant to 5 U.S.C. § 8113(a). The Board noted that its November 2, 2016 order that the overpayment issues were not in posture as the pay rate issue had not been resolved. Therefore, on return of the case record, the Board instructed OWCP to properly adjudicate the overpayment issues to protect appellant's appeal rights. The Board further instructed OWCP to obtain current financial information regarding appellant's income, expenses, and assets, and determine whether he was entitled to waiver of recovery of the overpayment.

By decision dated August 22, 2017, OWCP found an overpayment of compensation in the amount of \$16,740.25 for the period July 18, 2013 through March 5, 2016, found appellant at fault in the creation of the overpayment and therefore denied waiver of recovery of the overpayment, and ordered recoupment of the overpayment at the rate of \$200.00 every 28 days.

By decision dated April 11, 2018,⁵ the Board set aside OWCP's August 22, 2017 decision finding that OWCP had not followed the Board's remand instructions from the July 27, 2017 decision as it had not issued a decision regarding "all of the overpayment issues." OWCP, by letter dated May 17, 2018, requested that appellant submit his current financial information and supporting documents for review by OWCP to determine his eligibility for waiver of recovery of the overpayment. In response, appellant submitted a completed overpayment recovery questionnaire (Form OWCP-20) dated May 21, 2018 and supportive financial information. He contended that the employing establishment and OWCP incorrectly calculated his pay rate.

OWCP, by decision dated July 5, 2018, again denied waiver of recovery of the \$16,740.25 overpayment created for the period July 18, 2013 to March 5, 2016 based on appellant's failure to establish that he required substantially all of his income to meet ordinary and necessary living expenses.⁶ It further determined that it would recover the overpayment by deducting \$200.00 from his continuing compensation payments.

The Board has duly considered the matter and finds that the case is not in posture for decision as OWCP has not complied with the Board's July 27, 2017 and April 11, 2018 decisions. By these decisions on remand, OWCP was to issue a decision regarding "all of the overpayment issues" to preserve appellant's appeal rights. However, it only found that appellant was not entitled to waiver of recovery of the \$16,740.25 overpayment as he did not need substantially all of his income to meet ordinary and necessary living expenses. OWCP did not make any findings to confirm the fact and amount of the overpayment as instructed by the Board's decisions.

Since OWCP failed to make proper findings as directed by the Board, the case will be remanded to OWCP. On return of the case record it should make specific findings as to fact as to

⁴ Docket No. 17-0257 (issued July 27, 2017).

⁵ Docket No. 17-2013 (issued April 11, 2018).

⁶ In the July 5, 2018 decision, OWCP noted that the current balance of the overpayment was \$12,436.60.

the amount of the overpayment and waiver of recovery of the overpayment. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the July 5, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 26, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board